

Application No.: 10/757,746
Filing Date: January 15, 2004
Page: 5

REMARKS

Claims 1 through 18 and new Claims 19 and 20 are pending in the application.

Claim 1 has been amended to reflect that the films of the invention are advantageously biaxially oriented. Support for this amendment can be found in the Application as filed, for example on Page 11, lines 1 through 2.

Claim 1 has been additionally amended to reflect the overlayer (A) beneficially exhibits a gloss of greater than 100. Support for this amendment can be found in the Application as filed, for example in Claims 12 as originally filed.

~~Consequently, Claim 12 has been canceled, as its subject matter has been incorporated~~
into Claim 1.

Claim 6 has been amended to conform to United States practice.

Claim 16 has been amended to reflect that advantageous embodiments of the invention include filler, which is present in amounts of less than 0.5 weight percent. Support for this amendment can be found in the Application as filed, for example on Page 10, lines 9 through 10.

Claims 19 and 20 have been added to complete the record for examination and highlight advantageous embodiments of the invention.

Claim 19 is directed to advantageous embodiments of the invention in which the overlayer (A) does not include poly(m-xylyleneadipamide). Support for this amendment can be found in the Application-as-filed on Page 9, lines 13 through 14.

Application No.: 10/757,746
Filing Date: January 15, 2004
Page: 6

Claim 20 is directed to advantageous embodiments of the invention in which the base layer (B) consists essentially of polyester, poly(m-xylenedipamide) and at least one additive selected from one or more stabilizers and one or more antiblocking agents. Support for this amendment can be found in the Application-as-filed on Page 9, lines 19 through 21.

Reexamination and reconsideration of this application, withdrawal of all rejections, and formal notification of the allowability of the pending claims are earnestly solicited in light of the following remarks.

Objection to Information Disclosure Statements

Revised Information Disclosure Statements ("IDSs"), initially filed 2/4/2005 and 5/13/2004, are enclosed. Applicants' Representative sincerely regrets any inconvenience this oversight may have caused.

Submission of Terminal Disclaimer

Claims 1 through 18 stand provisionally rejected under the judicially created doctrine of double patenting over co-pending Application No. 10/757,837. Claims 1, 2, 5 through 9, 12, 14 and 17 through 18 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over co-pending Application Nos. 10/760,987 and 10/760,986.

Solely to advance prosecution of the case and without addressing the merits of the rejection, Applicants respectfully submit herewith a terminal disclaimer, as suggested by the Examiner. More particularly, Applicants submit herewith a terminal disclaimer that disclaims the terminal part of any patent granted on the above-identified application extending beyond the expiration date of the full statutory term which may ultimately result from the cited co-pending applications, i.e. Application Nos. 10/757,837; 10/760,987 and 10/760,986.

Application No.: 10/757,746
Filing Date: January 15, 2004
Page: 7

Accordingly, Applicants respectfully request withdrawal of this rejection upon entry of the enclosed terminal disclaimer.

The Claimed Invention is Patentable
In Light of the Art of Record

Claims 1 through 18 stand rejected as anticipated by United States Patent No. 4,957,980 ("US 980") to Kobayashi et al.

It may be useful to consider the invention before addressing the merits of the rejection.

Polyester films are widely known for packaging applications. Unfortunately, polyester alone does not exhibit the elevated level of barrier properties required in a number of applications.

Poly(m-xylenedipamide) (MXD6) is known to have superior barrier properties in comparison to polyester. Unfortunately, MXD6 and polyester are incompatible, hence films formed to-date have suffered from high roughness values, resulting in a lower gloss appearance which is undesirable in many packaging applications. (The Examiner's attention is kindly directed to the Application-as-filed on Page 1, line 30 – Page 2, line 12).

Surprisingly, Applicants have found that overlayers may be used to avoid the gloss issues of conventional films. Accordingly, the claims are directed to biaxially oriented polyester films having a base layer (B) and at least one overlayer (A), in which the base layer (B) comprises poly(m-xylenedipamide) and the overlayer (A) exhibits a gloss of greater than 100.

Application No.: 10/757,746
Filing Date: January 15, 2004
Page: 8

In contrast to the recited biaxially oriented films, US 980 is primarily directed to hollow molded articles. (Col. 1, lines 5 through 9). The molded articles are formed from polyester resin that further includes polyamide. Evidencing conventional wisdom, US 980 notes that articles formed from compositions that include both polyester and polyamide traditionally suffer from poor optical properties, limiting their widespread use. (Col. 1, lines 56 – 60).

The impetus of US 980 is thus the incorporation of a compatibilizer that improves the optical properties of articles formed from polyester/polyamide blends. (Col. 1, lines 61 – 68). Suitable compatibilizers include maleic acid grafted compounds and epoxy compounds. (Col. 3, lines 22 – Col. 4, line 3). The compatibilizer may be present in amounts of up to 50 parts by weight. (Col. 4, lines 4 – 7). US 980 provides a laundry list of suitable polyamides, which may be present within the composition in amounts as low as 1 part by weight. (Col. 2, line 61 – Col. 3, line 12 and Col. 3, lines 18 – 20). US 980 also discloses a variety of further additives, such as UV absorbers and the like. (Col. 4, lines 10 – 14). US 980 is silent as to the presence of fillers, however.

US 980 merely broadly notes that the hollow molded article may be either a single layer or multilayered. (Col. 2, lines 20 – 22). The hollow molded article may further be biaxially oriented using a particular blow molding technique in which a parison is injection molded and subsequently oriented. (Col. 4, lines 49 – 51).

Accordingly, US 980 does teach or suggest the recited biaxially oriented film, much less biaxially oriented multilayered films having a base layer (B) and an overlayer (A), and most certainly not such films in which the overlayer (A) exhibits a gloss of greater than 100.

Nor does US 980 teach or suggest such films in which the overlayer (A) does not include poly(m-xylenedipamide), as recited in Claim 19. In fact, US 980 teaches away from such embodiments by teaching the use of compatibilizers, not individual layer composition, to address optical issues.

Application No.: 10/757,746
Filing Date: January 15, 2004
Page: 9

US 980 likewise teaches away from embodiments in which the base layer (B) consists essentially of polyester and at least one additive selected from one or more stabilizers and one or more antiblocking agents, as recited in Claim 20. As noted above, US 980 instead requires the incorporation of a compatibilizer.

US 980, altogether silent as to fillers, also does not teach or suggest multilayered films having an overlayer (A) that further comprises filler, much less such films in which the overlayer (A) includes a maximum filler concentration of 0.5% by weight, as recited in Claim 16.

Accordingly, Applicants respectfully submit that Claims 1 through 11 and 13 through 20 are patentable in light of US 980.

CONCLUSION

It is respectfully submitted that Applicants have made a significant and important contribution to the art, which is neither disclosed nor suggested in the art. It is believed that all of pending Claims 1 through 11 and 13 through 20 are now in condition for immediate allowance. It is requested that the Examiner telephone the undersigned if any questions remain to expedite examination of this application.

It is not believed that extensions of time or fees are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time and/or fees are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required is hereby authorized to be charged to Deposit Account No. 50-2193.

Application No.: 10/757,746
Filing Date: January 15, 2004
Page: 10

Respectfully submitted,

Cathy Moore

Cathy R. Moore
Reg. No. 45,764

ProPat, L.L.C.
425-C South Sharon Amity Road
Charlotte, NC 28211-2841
Telephone: (704) 365-4881
Fax: (704) 365-4851
Customer No. 38263

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at facsimile number (703) 872-9306 on June 30, 2005.

Claire Wygand

Claire Wygand